

Appl. No. 09/581,520
Amendment dated: August 29, 2005
OA dated: April 28, 2005

REMARKS

Applicants have amended claim 1 to remove the objection as noted by the Examiner on page 2 of the Official Action. Accordingly, this amendment obviates the claim objection and therefore, it is most respectfully requested that this objection be withdrawn.

The claims remaining in the application are claims 1-3, 5-14 and 18-24. Applicants note that there is no prior art rejection of claims 5-8 or of claims 18-20. Therefore, these claims are understood to be allowable over the prior art or record. Moreover, Applicants most respectfully submit that all of the claims now present in the application are in full compliance with 35 U.S.C. 112 and are clearly patentable over the references of record.

Applicants wish to thank Examiner Azpuru the courtesy of the telephone interviews granted the undersigned attorney to discuss arranging an interview in connection with this application. Unfortunately, the scheduled interviews could not be conducted due to conflicts with the Examiner's schedule. It is believed that the present response overcomes the outstanding rejections but, should any additional rejections be issued, the Examiner is requested to contact the undersigned attorney so that an interview can be re-scheduled to try to resolve these issues, particularly in view of the fact that not all of the claims have been rejected over the prior art. In particular, there is no prior art rejection of claims 5-8 and 18-20.

In addition, Applicants submit herewith the required translation of the priority document to complete the claim for priority. Applicants are entitled to a filing date of December 23, 1997 for the common claim subject matter. This is prior to the publication date of the cited reference and removes this reference as prior art. Accordingly, it is most respectfully requested that this rejection be withdrawn.

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The rejection of claims 1-3, 5-14 and 18-24 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement has been carefully considered but is most respectfully traversed when the specification is read in light of the level of skill of one of ordinary skill in the art to which the invention pertains.

More particularly, Applicants most respectfully submits that one of ordinary skill in the art which relates to dietetic and pharmaceutical compositions knows that a fat normally consists of mixed esters of glycerol and higher fatty acids. Depending on the number of carbon atoms and the number of double bonds in the fatty acids, the fats possess different properties. They can be in liquid or semi-solid form. Furthermore, lecithins are considered fats.

The preamble of claim 1 specifies that a fat blend is claimed which is based upon the usual ingredients belonging to the category fat as would be understood by one of ordinary skill in the art to which the invention pertains.

In addition, fat blends are already known which do not contain only fats and oils in which the fatty acid is a component thereof, but also contain fatty acids as such which are therefore not bound to a glycerol molecule but are present in the form of a free acid. These fatty acids not bound to the glycerol molecule can furthermore be present in the form of salts and esters thereof. Fatty acids in bound form therefore represent a mandatory component of a fat or fat blend as recited in the claims.

More particularly, the present invention claims a fat blend in which the specific fatty acids, gamma-linolenic acid, stearidonic acid and eicosapentaenoic acid make up 10 to 500 mg per g total fatty acids. These are specific claim limitations as would be understood by one of ordinary skill in the art. Therefore, these fatty acids are present as specified in the additional ratios of the sum of these three fatty acids.

In addition, the claim specifies that the fat blend also contains arachidonic acid in the specified ratio. Thus, the claim is fully supported by the written description and is also definite as would be appreciated by one of ordinary skill in the art.

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Thus, the claim limitations set forth in claim 1 clearly describe which fat blends are included in the presently claimed invention. The fatty acids specified can form part of a triglyceride, lecithin and can even be present in the free acidic form as would be clearly appreciated by one of ordinary skill in the art to which the invention pertains.

According to the present invention, only those fat blends are claimed which contain arachidonic acid as specifically and definitely specified in the claims. In other words, one of ordinary skill in the art would fully appreciate that fat blends which do not contain arachidonic acid cannot be considered as falling under claim 1. In addition, claim 1 contains the following feature: the quotient of the sum of the gamma-linolenic acid plus stearidonic acid plus eicosapentaenoic acid to arachidonic acid is at least 10 to 1. Once again only those fat blends fall under claim 1 in which this feature or parameter, respectively, is fulfilled. In other words, the mentioning of specific fatty acids in claim 1 serves the purpose of distinguishing the blend of the present invention from known and other fat blends. This is a common way of defining fat blends.

In this context, Applicants would like to refer to the cited EP 0 843 972 reference which uses the same kind of language for defining the fats there claimed. By the way, there exists a parallel U.S. patent application (US 000005886073 A).

As far as the objection of claim 5 is concerned the following should be noted.

Lecithins represent a common and ordinary component of a fat blend. These lecithins represent phospholipids which consist of fatty acids, glycerol, phosphoric acid and choline and have been formed by esterification.

According to claim 5, a fat blend is claimed in which the phospholipids make up to 50 wt-% of the total lipids (= some of the oils, fats and lecithins). In other words, only those fat blends are claimed by claim 5 for which this feature is fulfilled.

In addition, Applicants refer to the explanations given in the last paragraph of page 3 of the English language translation of the PCT-application and paragraph 4 of page 5 of said translation.

The explanations there given may give a raise to the following problem.

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Normally, a fat blend contains two different fat components in the form of an oil, fat and lecithin. The fatty acids of interest can be present in bound form (see the explanations given above) and also in the form of free fatty acids, simply fatty acid esters and/or fatty acid salts. In this case the free fatty acids present something like an additional component to a fat blend.

It is, however, mentioned in the specification that the fat blend of the invention may consist exclusively of these free fatty acids and so on. This means that "ordinary" fats and oils including lecithins and phospholipids need not to be present.

Turning now to the '972 reference already mentioned above, Applicants do not agree with the Examiner's interpretation of this reference given on page 4, last paragraph and page 5 of the Official Action.

This reference discloses a fat blend which may contain fatty acids. Among these are polyunsaturated fatty acids which comprise 5 to 25 wt.-%. This analysis of the Examiner is partially incorrect. It is correct that the citation discloses a fat blend which may contain fatty acids. However, it is specified in the citation that the n-3 polyunsaturated contain fatty acids (and not in general the polyunsaturated fatty acids) comprise 5 to 25 wt.-%.

The Examiner then argues that these polyunsaturated fatty acids include stearidonic acids, eicosapentaenoic acid and gamma-linolenic acids. The gamma-linolenic acid is, however, not a n-3 polyunsaturated fatty acid but rather a n-6 polyunsaturated fatty acid whereas the stearidonic and the eicosapentaenoic acids are indeed n-3 polyunsaturated fatty acids. In other words, the gamma-linolenic acid does not contribute anything to the 5 to 25 wt.-%. It rather belongs to the 0-30 wt.-% of the other fatty acids mentioned in the abstract of said citation.

As would be appreciated by one of ordinary skill in the art, it is clearly specified in this citation that the gamma-linolenic acid belongs to the n-6 (ω -6) polyunsaturated long-chain fatty acids, see the definitions on page 3 of the '972 reference.

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This means in addition that the gamma-linolenic acid needs not to be present according to said citation since it is not a n-3 polyunsaturated fatty acid and belongs therefore to the 0 to 30 wt.-% of other fatty acids which consequently need not to be present since these other fatty acids may comprise 0 wt.-%. These are additional reasons why the prior art rejection should be withdrawn.


In contrast thereto the gamma-linolenic acid comprises 20 to 50 wt.-% of the sum of the gamma-linolenic acid, stearidonic acid and eicosapentaenoic acid.

Applicants do not believe that this reference provides any motivation to make the necessary modification or gives a hint to a man skilled in the art that the gamma-linolenic acid must be present in the amount specified. Accordingly, it is most respectfully requested that this rejection be withdrawn.

In view of the above comments and further amendments to the claims, favorable reconsideration and allowance of all of the claims now present in the application are most respectfully requested.

Respectfully submitted,

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